

M. Anne Swanson
T: +1 202 776 2534
aswanson@cooley.com

VIA ECFS

August 27, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, Dc 20554

RE: Notice of *Ex Parte* Communication
MB Docket No. 10-71

Dear Ms. Dortch:

In accordance with Section 1.1206 of the FCC's rules, this is to advise you that, on the dates indicated on Exhibit A, Deborah A. McDermott, Senior Vice President and Chief Operating Officer of Media General, Inc. ("Media General"); Andrew C. Carington, Vice President, General Counsel, and Secretary of Media General; Henry Gola, Associate General Counsel of Media General; and I met with the FCC representatives listed on Exhibit A to discuss the public interest benefits of the FCC's network non-duplication and syndicated exclusivity rules (the "Exclusivity Rules") and the potential effects and unintended consequences of their proposed elimination. The handout attached as Exhibit B was distributed at the meetings.

In addition to reviewing the information on Exhibit B, the Media General representatives described the extensive amount of high-quality local news and information the company's stations air in their communities. Collectively, Media General's stations broadcast 1,780 hours of local news per week at an overall cost of roughly \$250 million annually.

In each meeting, Ms. McDermott expressed her concern that, if the Exclusivity Rules were eliminated, Media General stations, particularly those in smaller markets, would lack the resources to provide the same level of local coverage, severely undermining the FCC's core public interest goal of localism. She discussed the extensive resources that the company brings to bear in covering breaking news stories. As examples, Ms. McDermott reviewed Media General's coverage of the recent theatre shooting in Lafayette, Louisiana; church shooting in Charleston, South Carolina; and widespread flooding in Nashville, Tennessee. In addition, she described how the Media General stations in those markets continued to work after the events to support their communities, providing news coverage that humanized the events, broadcasting information necessary for viewers to deal with practical consequences – such as FEMA filings in the Nashville case, and organizing and providing local community services meeting logistical and other needs occasioned by the tragedies.

In the meeting with Commissioner Clyburn and Ms. Hardy, Ms. McDermott discussed how Media General's stations were covering the breaking story of the on-air shooting of two news professionals from WDBJ(TV) in Roanoke, Virginia. She described how, immediately following



Marlene H. Dortch
August 27, 2015
Page Two

the breaking news of the story, she had reached out to her counterpart at WDBJ's owner to offer the facilities and personnel of Media General's WSLs-TV in Roanoke to keep WBDJ's news reports flowing to the community as that station locked down its facilities and dealt with employees devastated by the news. Ms. McDermott also explained how Media General's local news directors collectively decided not to air footage of the on-air slaying, contrary to other news services, including some of the networks with which Media General is affiliated.

As explained in Exhibit B, Mr. Carington emphasized that without the Exclusivity Rules, the industry lacks an effective judicial or other mechanism to enforce exclusivity provisions in existing contracts. He said that the certainty of enforcement under the simple, bright-line Exclusivity Rules acts as a deterrent among various industry players. Contrary to suggestions, the lack of FCC complaints and litigation to date shows that the rules are clear and effective, not that they are outdated.

Finally, Mr. Carington noted that if the Exclusivity Rules were eliminated, it would take at least five years to re-establish a legally enforceable system or mechanism to ensure compliance with privately-negotiated programming exclusivity provisions.

As required by Section 1.1206(b), as modified by the policies applicable to electronic filings, one electronic copy of this letter is being submitted for the above-referenced docket.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Anne Swanson", with a long, sweeping horizontal line extending to the right.

M. Anne Swanson

Enclosures

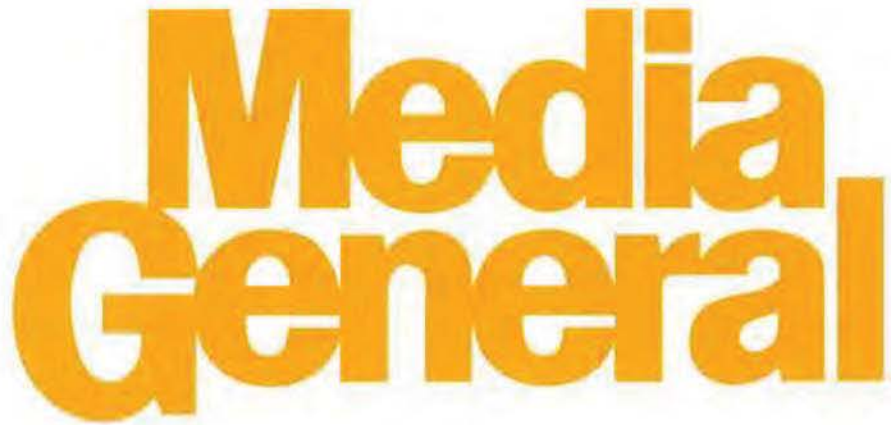
cc w/encl.: FCC representatives listed on Attachment A (via email)

EXHIBIT A

Meeting Date	FCC Attendee(s) at Meetings
August 25, 2015	Maria Kirby , Legal Advisor – Media, Consumer and Governmental Affairs, and Enforcement, Office of Chairman Tom Wheeler
August 25, 2015	Commissioner Ajit Pai Alison Nemeth , Interim Legal Advisor for Media Issues, Office of Commissioner Pai
August 26, 2015	Commissioner Mignon Clyburn Chanelle Hardy , Chief of Staff and Media Legal Advisor to Commissioner Clyburn

EXHIBIT B

See attached



**The Exclusivity Rules:
Protecting Localism and
Providing an Efficient,
Pro-Consumer
Enforcement Mechanism**

August 25, 2015

Media General: Operates or services 71 full power stations in 48 markets



**Media
General**

LOCAL EXCLUSIVITY RULES AND THE POTENTIAL EFFECTS OF THEIR ELIMINATION

I. Key Background

- A. **Exclusivity Rules.** The FCC's Network Non-Duplication and Syndicated Exclusivity Rules (the "Exclusivity Rules") give local stations the right to ask the FCC to enforce geographic exclusivity protections that they have negotiated with networks and syndicators. These rights prevent MVPDs from carrying programming of a distant station that duplicates a local broadcast station's programming.
- B. **FCC Proposal.** The FCC is proposing to eliminate the Exclusivity Rules, effectively requiring stations to rely on programming suppliers and courts to enforce contractual exclusivity.
- C. **Effect of Elimination.** Elimination would (i) particularly devastate stations in small-markets; (ii) decrease locally-produced broadcast programming, thereby gutting localism; (iii) increase the scope of blackouts; and (iv) contribute to rising cable bills nationwide.

II. History of the Exclusivity Rules

- 1965 – FCC adopted the Network Non-Duplication Rule to protect a local TV station's right to exclusively provide network content in its market. *Purpose:* promote local broadcasting by ensuring that local network affiliates could realize dependable revenue streams from their distribution of national network content.
- 1972 – FCC adopted the Syndicated Exclusivity Rule to ensure that local broadcasters could obtain similar benefits with respect to syndicated programming.
- 1976 – Copyright Act of 1976 addressed several Supreme Court decisions that had found cable operators did not have to make copyright payments for retransmitting TV broadcast programming. The Act granted cable operators a compulsory copyright license, allowing retransmission of broadcast signals for a nominal fee. In exchange for the compulsory license, which was a departure from a free market system, cable operators were required to follow all FCC broadcast signal carriage rules, including the Exclusivity Rules.
- 1988 – Congress extended the compulsory license to satellite video providers with provisions that essentially recognized the Exclusivity Rules.
- 1992 – Cable Act of 1992 established retransmission consent, addressing cable's compulsory license, which created a "distortion in the video marketplace" through local broadcast stations' subsidization of cable competitors. The Senate Report on the Act said that Congress relied on continued existence of the Exclusivity Rules and that their repeal or amendment would be inconsistent with legislative intent.



III. Interplay of Programming Agreements, Retransmission Consent, and Exclusivity

- A. Network Affiliation and Syndication Agreements.** Generally, local stations' network affiliation and syndication agreements:
- (1) define exclusive territories for the programming's broadcast;
 - (2) prohibit stations from granting retransmission consent outside local markets; and
 - (3) incorporate the Exclusivity Rules.
- B. Retransmission Consent Agreements.** Retransmission consent agreements allow broadcasters to control MVPD redistribution of their signals in their local markets and generally incorporate the Exclusivity Rules, prohibiting MVPD's redistribution of distant stations' duplicate programming.
- C. Operation of Exclusivity Rules.** Broadcasters enforce their exclusivity rights through a complaint to the FCC. Certainty of FCC enforcement keeps local cable operators and satellite providers from ignoring broadcasters' contractual exclusivity.

IV. Consequences of Eliminating the Exclusivity Rules

A. Makes Current Contracts Essentially Unenforceable.

- Current contracts generally do not permit stations' direct enforcement of exclusivity rights through an avenue other than the FCC.
- Local stations would face distant signal importation without a real remedy. They would have to rely on their networks and syndicators to enforce their contractual exclusivity against other stations, either through the programming suppliers bringing lawsuits or terminating offending stations' affiliations or syndication agreements. Even if program suppliers could be convinced to take such action, it would be slow, expensive, and unpredictable and produce a patchwork of nationwide decisions

B. Destroys Small Market Stations.

- Small market stations absolutely depend on retransmission consent revenues to fund local operations. Those revenues, in turn, are dependent on local exclusivity.
- Without exclusivity protections and with the threat of distant signal importation, the retransmission consent value of these small-market stations will be greatly (and artificially) diminished.
- Stations in smaller markets located near or adjacent to urban markets would likely suffer immediate harm as larger stations in urban markets would seek to expand their reach through retransmission consent. *Result:* the eventual displacement of "local" TV service in local markets by cable retransmission of a handful of distant superstations (perhaps network-owned).



- Squeezed by high programming costs, lower retrans rates, and lower advertising revenues due to shrinking service areas, small operators would exit, leading to more media concentration.

C. *Reduces Localism.* Today, local TV broadcasters are the preeminent providers of local news and information. Increased importation of distant stations will hurt localism:

- A viewer in Kansas derives little benefit from watching local coverage from Oregon.
- Radar maps and emergency coverage of severe weather thousands of miles away will confuse viewers
- Lower retrans fees will force stations' reduced investment in local news and other local programming
- If existing retransmission agreements between local TV stations and MVPDs do not clearly prohibit retransmission beyond local markets, compulsory copyright would allow those MVPDs to begin retransmitting signals in any other market they serve. In future retrans negotiation cycles, new retransmission agreements would likely not prohibit retrans beyond local markets

D. *Distorts Markets.* Elimination amounts to the FCC picking winners and losers. Compulsory copyright provides an enormous government subsidy to cable operators and represents a distinct departure from a free-market system for programming performance rights. Rather than haphazardly and arbitrarily distorting the market, the FCC should urge Congress to holistically review the entire local broadcast and MVPD programming distribution ecosystem.

E. *Won't Prevent Retransmission Consent Blackouts.* The creation of larger regional superstations will lead to more and wider blackouts during retrans negotiations. Instead of losing a station in a single market, regional superstation blackouts will affect numerous markets at once.

F. *Increases Cable Rates.* Repeal of the Exclusivity Rules will likely affect cable rates. Weaker local TV stations will receive less for retrans. The lower retrans rates will push high-demand content to cable, ultimately raising cable bills.